58 N. Y. 272, 17 Amer. Rep. 244. And in one jurisdiction the passage of a statute was necessary to overrule it. *Wessels* v. *Weiss,* 166 Pa. St. 490, 31 Atl. 247. But generally the later view of the English court has been approved, and it is now held that the mere participation in the profits of another's business, will not make the participant a partner as to third persons. *Fairley* v. *Nash,* 70 Miss. 193, 12 South. 149; *Mehan* v. *Valentine,* 145 U. S. 611. Participation in profits is presumptive but not conclusive evidence of a partnership. *Mehan* v. *Valentine, supra.*

RAILROADS—NEGLIGENCE—CATTLE GUARDS.—A railway company was required by statute to erect and maintain proper cattle guards. It did so, but allowed them to become so filled with ice and snow as to make it possible for animals to cross. *Held,* this, without more, does not amount to negligence in law for which the company is liable. *Martin* v. *Atchison, etc., R. Co.* (Kan.), 141 Pac. 599.

Neither the common law, nor the ordinary fence law imposes upon railroads the duty to erect fences or cattle guards upon their right of way. *Ward* v. *Paducah, etc., R. Co.,* 4 Fed. 862. The railroad is not liable unless the injury occurred through its reckless, wanton or malicious acts. *Bateman* v. *Rutland R. Co.,* 126 App. Div. 511, 110 N. Y. Supp. 506.

But by statute in most States railroads are required to construct and maintain cattle guards at all crossings sufficient to prevent stock from getting upon their tracks. But its liability in such cases depends upon the existence of negligence in the light of all the surrounding circumstances. *Wait* v. *Bennington, etc., R. Co.,* 61 Vt. 268, 17 Atl. 284; *Yates* v. *Chicago, etc., R. Co.,* 115 Minn. 492, 132 N. W. 994, 36 L. R. A. (N. S.), 997. When a railroad company permits its cattle guards to remain filled with ice and snow after a sufficient time has elapsed in which to remove it and as a result cattle stray upon the track and are injured, the company is liable. *Duningan* v. *C., etc., R. Co.,* 18 Wis. 28; *Indiana, etc., R. Co.* v. *Drum,* 21 Ill. App. 331; *Graham* v. *Chicago, etc., R. Co.,* 78 Iowa 564, 43 N. W. 529; 5 L. R. A. 813; *Robinson* v. *Chicago, etc., R. Co.,* 79 Iowa, 495, 44 N. W. 718. To impose upon a railway company the duty to keep its guards clear of the natural accumulations of ice and snow is one sometimes impossible of fulfillment and often impracticable on account of the frequent fall of snow. The expense of doing so is out of proportion to the benefits to be derived from its performance, and its failure to do so does not render it liable. *Blais* v. *Minneapolis, etc., R. Co.,* 34 Minn. 57, 24 N. W. 558, 57 Am. Rep. 36. Under ordinary circumstances reasonable care and diligence does not require a railway company to remove the natural accumulations of ice and snow. *Blais* v. *Minneapolis, etc., R. Co., supra.*

As a cattle guard is in effect a fence the rules applicable to one should apply also to the other. *Blais* v. *Minneapolis, etc., R. Co., supra.* And it is generally held that where a fence is destroyed and before the expiration of a reasonable time cattle stray upon the track and are in-

jured the company is not liable. *Toledo, etc., R. Co.* v. *Daniels,* 21 Ind. 256; *Indianapolis, etc., R.* Co. v. *Truitt,* 24 Ind. 162. Where an animal crossed over a fence on account of snow drifted against it and was injured, the railway company was not liable as it was under no duty to remove the snow. *Patten* v. *Chicago, etc., R. Co.,* 75 Iowa 459, 39 N. W. 708. It seems the same rule should apply to cattle guards.

SALES—CONDITIONAL SALES—ACCEPTANCE OF COLLATERAL SECURITY DEFEATING TITLE.— A seller retaining title under a conditional sale subsequently took the personal security of a third person for the purchase price. *Held,* the acceptance of collateral security does not divest the seller's title. *McDonald Automobile Co.* v. *Bicknell* (Tenn.), 167 S. W. 108.

This doctrine is supported by the weight of authority. *Cherry* v. *Arthur,* 5 Wash. 787, 32 Pac. 744; *Standard Steam Laundry Co.* v. *Dole,* 22 Utah 311, 61 Pac. 1103; *Kimball* v. *Costa,* 76 Vt. 289, 56 Atl. 1009, 104 Am. St. Rep. 937; *Monitor Drill Co.* v. *Mercer* (C. C. A.), 163 Fed. 943, 20 L. R. A. (N. S.) 1065. The only case *contra,* states the rule that collateral security on other property taken at the time of the sale is inconsistent with the retention of title; the latter of itself being absolute security. *Silver Bow Min., etc., Co.* v. *Lowry,* 6 Mont. 288, 12 Pac. 652. In an unsatisfactory case it was held that the giving of a new note by the buyer to cover the balance due on preceding notes divested the seller's title, but it seemed to be based merely on a matter of evidence as to the intention of the parties. *Edgewood Distilling Co.* v. *Shannon,* 60 Ark. 133, 29 S. W. 147. *Contra, National Cash Register Co.* v. *Riley,* 7 Pen. (Del.) 355, 74 Atl. 362. The rule laid down in the principal case applies with equal force to a conditional sale of real estate. *Anthony* v. *Smith,* 9 Humph. (Tenn.) 508; *Fogg* v. *Rogers,* 2 Cold. (Tenn.) 290.

More radical than the decision in the instant case are numerous holdings to the effect that the execution of a chattel mortgage on the identical property sold, and its acceptance by the seller, either contemporaneously or subsequently, does not convert the conditional sale into an absolute sale. *Bierce* v. *Hutchins,* 205 U. S. 340; *Greenwald* v. *Tinsley,* 90 Miss. 38, 42 South. 89; *First Nat. Bank of Corning* v. *Reid,* 122 Iowa 280, 98 N. W. 107. It is difficult to see on what legal principle it can be maintained that the retention of title by a seller is consistent with the accepance of a chattel mortgage by the buyer on the property sold as additional security for the purchase price. The power to execute a chattel mortgage on property necessarily implies title in the person giving the mortgage. *Cornish* v. *Frees,* 74 Wis. 490, 43 N. W. 507. In a conditional sale the seller retains the title. The execution of a mortgage by the buyer, on the property conditionally sold, and its acceptance by the seller, should, it would seem, *ipso facto* convert the conditional sale into an absolute one, either on the ground that the condition is satisfied or that there is a waiver of title by the seller. *Thornton* v. *Findley,* 97 Ark. 432, 134 S. W. 627, 33 L. R. A. (N. S.) 491; *American Soda Fountain Co.* v. *Blue,* 146 Ala. 682, 40 South. 218. The seeming con-